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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 154

WONG YANG SUNG, PETITIONER,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 1, 1949.

CERTIORARI GRANTED OCTOBER 10, 1949.

APPENDIX

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10009

WONG YANG SUNG, *Appellant*,

v.

TOM CLARK, Attorney General of the United States, WATSON B. MILLER, United States Commissioners of Immigration and Naturalization, *Appellees*.

Appeal from the United States District Court for the District of Columbia.

JOINT APPENDIX.

Filed July 23 1948

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

WONG YANG SUNG, 656 Pennsylvania Avenue, S. E., Washington, D. C., *Petitioner*,

v.

TOM CLARK, Attorney General of the United States, WATSON B. MILLER, United States Commissioner of Immigration and Naturalization, both of Washington, D. C., *Respondents*.

Petition for Writ of Habeas Corpus

To the Honorable Judges of the District Court of the United States for the District of Columbia:

The petitioner, Wong Yang Sung, respectfully shows unto the Court as follows:

1. That he is a citizen of the Republic of China, and that he has resided in the United States since his arrival at New York City, on April 21, 1946, and that he is presently unjustly and unlawfully detained and imprisoned at a District of Columbia Jail, and restrained of his liberty by respondents, and under color and pursuant to deportation proceedings hereinafter more fully set forth.

2. That on or about the 14th of October, 1947, your petitioner was taken into custody under a warrant of arrest issued by the Attorney General dated October 13, 1947. On December 11, 1947, petitioner was accorded a hearing before a Presiding Inspector under said warrant of arrest and at the conclusion of said hearing was ordered deported. An appeal to the Board of Immigration Appeals was dismissed. The Attorney General signed a warrant of deportation on your petitioner effective July 23, 1948.

2 3. Petitioner shows that his detention, confinement and restraint of liberty is unlawful and without authority in law on this:

That the commitment or order under which petitioner is purported to be presently confined, is illegal and void because the United States Immigration authorities failed to comply with the statutory requirements provided by Title 8, U. S. C. Section 137(9) and 156 which states that hearings of this type must be held in accordance with the Administrative Procedure Act, 60 Stat. 243, Title 5 U. S. C. Section 1001, et seq.

4. Petitioner further shows that the purported hearing was in conflict and directly opposed to the mandatory provisions of the Administrative Procedure Act in that:

(a) The presiding officer was responsible to and subject to the supervision and direction of the respondents, their officers, employees, or agents who are engaged in the performance of investigation and prosecuting function;

(b) The presiding officer was not qualified as a competent examiner subject to the Civil Service and other laws of the United States;

(c) The presiding officer was not assigned to the hearing in rotation.

Petitioner charges that the action of the government in failing to comply with the mandatory requirements of the aforesaid Act rendered the proceedings void and were in violation of the Fifth Amendment to the Constitution of the United States.

5. That notwithstanding all the foregoing, the Attorney General has issued a warrant for the deportation of your petitioner to China, and your petitioner is now illegally detained, imprisoned, and restrained of his liberty by the respondents, at the office of the United States Marshal, Washington, in the District of Columbia, within the jurisdiction of this Honorable Court.

3 Wherefore, the petitioner prays that a writ of habeas corpus issue herein, requiring the respondent

to produce before this Honorable Court, his body together with the cause of his detention to receive and abide by such order as may be made herein.

WONG YANG SUNG,
Petitioner.

THOMAS A. FARRELL,
LEO J. MICHALOSKI,
Attorneys for Petitioner,
500 Southern Building,
Washington, D. C.

• • • • • • • • • • •

4 Filed July 23 1948

Order Issuing Writ of Habeas Corpus

Now on this 23d day of July, 1948, the above matter coming on upon the petition for the issuance of a writ of habeas corpus, it is hereby ordered that said writ issue as in said petition prayed, returnable to and before this court at 10 A.M., of the 28 day of July, 1948.

ALEXANDER HOLTZOFF,
Justice.

• • • • • • • • • • •

5 **Habeas Corpus**

UNITED STATES DISTRICT COURT
DIVISION, ... DISTRICT OF COLUMBIA

H. C. 3420

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To 1. Tom Clark, Attorney General of the United States,
2. Watson B. Miller, United States Commissioner of Immigration and Naturalization, Washington, D. C.
3. or their agent—Charles B. Frank. —Greeting:

You are hereby commanded, that the body of Wong Yang Sung by you restrained of his liberty, as it is said detained

by whatsoever names the said Wong Yang Sung may be detained, together with the day and cause of his being taken and detained, you have before the Honorable Alexander Holtzoff, Judge of the United States District Court in and for the District of Columbia, at the court room of said Court, in the City of Washington at 10:00 o'clock a. m., on the 28th day of July, 1948, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Bolitha J. Laws, Chief Justice, United States District Judge at Washington, D. C. this 23rd day of July, A. D. 1948.

HARRY M. HULL,
Clerk.

By ANNE W. LYDDANE,
Deputy Clerk.

6 **United States Marshal's Return**

Washington, District of Columbia, ss:

Received the within writ the 23rd day of July, 1948, and executed same by serving Tom Clark, Atty. General, by personally serving Peter Brown, Exec. Acct. 7-23-48; Watson B. Miller, U. S. Courier, Immigration and Naturalization; by personally serving L. P. Winings, General Counsel, 7-26-48; and their agent, E. L. Farrell, 7-23-48.

W. BRUCE MATTHEWS,
U. S. Marshal.

E. J. BARCLAY,
C. E. RAMEY,
By E. V. BERQUIST,
Deputy Marshals.

7 Filed July 28 1948

Return and Answer to Writ of Habeas Corpus

Comes now the respondents in the above-entitled proceeding, and in obedience to said writ, produces the body of the petitioner at the time and place directed therein and for cause of detention respectfully shows that he holds the petitioner under and by virtue of a commitment issued by the United States Department of Justice, Immigration and Naturalization Service, a copy of which is hereto attached and made a part of this response.

Wherefore, having fully answered, respondents pray the judgment of the Court in the premises.

GEORGE MORRIS FAY,
United States Attorney.

OLIVER O. DIBBLE,
Assistant United States Attorney.

* * * * * * * * * *

9 Filed Jul 29 1948

Findings of Fact and Conclusions of Law

Upon consideration of the petition, the writ, and the return and answer thereto, and the evidence deduced in open court, the court finds as a fact:

1. That the petitioner, Wong Yang Sung, was provided a hearing by the Immigration and Naturalization Service of the United States Department of Justice on December 11, 1947, to determine petitioner's right to remain in the United States.

2. That said hearing was in accord with the provisions of law that govern same.

3. That as a result of the aforesaid hearing the petitioner was declared illegally in the United States and ordered deported therefrom.

Wherefore, the court concludes as a matter of law:

1. That Section 7(a) of the Administrative Procedure Act, (60 Stat. 243, Title 5 USC, Section 1001), is not applicable to hearings held by the Immigration and Naturalization Service of the United States Department of Justice.

2. That the petitioner is not unlawfully detained.

3. That the petitioner is not entitled to be released from the custody of the respondents.

ALEXANDER HOLTZOFF,
Justice.

• • • • • • • • • • •

10 Filed Jul 29 1948

Order

Upon consideration of the petition, the writ, the return and answer filed herein and upon the evidence as adduced in open court, it is by the court this 29th day of July, 1948.

Ordered, adjudged, and decreed, that the petition filed herein be denied, the writ discharged, and the petitioner remanded to the custody of the respondents. Upon the giving of a $1,000 bond said petitioner shall be released pending appeal.

ALEXANDER HOLTZHOFF,
Justice.

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11 Filed Aug 2 1948

Notice of Appeal

Notice is hereby given this 2nd day of August, 1948, that Wong Yang Sung, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 29th day of July, 1948 in favor of Respondents against said Petitioner.

LEO J. MICHALOSKI,
THOMAS A. FARRELL,
Attorneys for Petitioner.

United States Court of Appeals

FOR THE

DISTRICT OF COLUMBIA CIRCUIT

No. 10009

WONG YANG SUNG, APPELLANT

v.

TOM CLARK, Attorney General of the United States, WATSON B. MILLER, United States Commissioner of Immigration and Naturalization, APPELLEES

Appeal from United States District Court for the District of Columbia

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Argued February 8, 1949 Decided April 4, 1949

Mr. Leo J. Michaloski, with whom *Mr. Thomas A. Farrell* was on the brief, for appellant.

Mr. L. Clark Ewing, Assistant United States Attorney, with whom *Messrs. George Morris Fay*, United States Attorney, and *Oliver O. Dibble* and *John D. Lane*, Assistant United States Attorneys, were on the brief, for appellees. *Messrs. L. Paul Winings*, General Counsel, and *Robert L. Jefferys*, Attorney, Immigration and Naturalization Service, were also on the brief for appellees.

Before EDGERTON, PRETTYMAN, and PROCTOR, JJ.

PER CURIAM: The judgment of the District Court is affirmed on the opinion of Judge Holzoff. *Wong Yang Sung* v. *Clark*, 80 F. Supp. 235. It is immaterial that appellant entered the United States legally. *Azzollini et al.* v. *Watkins*, (C. A. 2d) decided March 10, 1949.

[fol. 9] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Apr. 4, 1949. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1949

No. 10009

WONG YANG SUNG, Appellant,

vs.

TOM CLARK, Attorney General of the United States; WATSON B. MILLER, United States Commissioner of Immigration and Naturalization, Appellees

Appeal from the United States District Court for the District of Columbia

Before: Edgerton, Prettyman and Proctor, JJ.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby affirmed.

Per curiam.

Dated April 4, 1949

[fol. 10] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Jun. 2, 1949. Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

No. 10009

WONG YANG SUNG, Appellant,

vs.

TOM C. CLARK, Attorney General of the United States, and Watson B. Miller, United States Commissioner of Immigration and Naturalization, Appellees

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Judgment.
3. Designation of Record.
4. Clerk's certificate.

Thomas A. Farrell, Leo J. Michaloski, Jack Wasserman, Attorneys for Appellant.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Designation of Record has been served upon the Appellees by mailing a copy thereof to their attorney, Hon. George Morris Fay, United States District Attorney, at Washington, D. C. this 1st day of June, 1949.

(S.) Jack Wasserman.

[fol. 11] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages, numbered 1 to 10, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties and the proceedings of the said Court of Appeals, as designated by counsel in the case of: Wong Yang Sung, Appellant, v. Tom Clark, Attorney General of the United States, Watson B. Miller, United States Commissioner of Immigration and Naturalization, Appellees, No. 10,009, April Term, 1949, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this seventh day of June, A. D. 1949.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit.
(Seal.)

[fol. 12] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.